

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**TYRONE DAVIS SMITH,**

Petitioner,

**-vs-**

**Case No. 09-C-725**

**MARC CLEMENTS,  
Warden, Fox Lake Correctional Institution,**

Respondent.

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**DECISION AND ORDER**

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On March 21, 2011, the Court entered an order denying Tyrone Smith's petition for a writ of habeas corpus. Smith filed a timely motion to alter or amend the judgment. Fed. R. Civ. P. 59(e). Smith then filed several additional motions, some of which are still pending, including a motion for summary judgment, a motion for preliminary injunction, and a motion for reinsertion of release on own recognizance. This matter was also stayed for a period of time while Smith pursued a failed interlocutory appeal.

Courts may grant Rule 59(e) motions to alter or amend the judgment "if the movant presents newly discovered evidence that was not available at the time of trial or if the movant points to evidence in the record that clearly establishes manifest error of law or fact." *Miller v. Safeco Ins. Co. of Am.*, 683 F.3d 805, 813 (7th Cir. 2012). Smith fails to meet this standard. For many of the same reasons, most of his other motions are also without merit.

With respect to his motion for a preliminary injunction, Smith concedes that he must proceed on this issue by filing a claim under Section 1983, but he asks for permission to file such a lawsuit because the Seventh Circuit previously ruled that he already incurred three strikes under the PLRA. The three strikes rule would not prevent Smith from actually filing a Section 1983 lawsuit, but what appears to prevent Smith from filing any claims is the Seventh Circuit's simultaneous imposition of a *Mack* order. *Smith v. City of Milwaukee Police Dep't*, No. 10-1907, June 18, 2010 Order. Smith offers little justification for lifting the *Mack* order, and Smith's request should be directed to the court of appeals in any event. *Support Sys. Int'l, Inc. v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995) ("We therefore authorize Mr. Mack to submit to *this court*, no earlier than two years from the date of this order, a motion to modify or rescind the order") (emphasis added).

Accordingly, Smith's Rule 59(e) motions [ECF Nos. 47, 91] are **DENIED**. The following motions are also **DENIED**: Smith's motion for summary judgment [ECF No. 76]; Smith's motion for a preliminary injunction [ECF No. 83]; and Smith's motion for release [ECF No. 92]. Finally, Smith's request for permission to file a Section 1983 complaint [ECF No. 93] is **DENIED**.

Dated at Milwaukee, Wisconsin, this 22nd day of August, 2012.

**BY THE COURT:**

  
HON. RUDOLPH T. RANDA  
U.S. District Judge